

ZACH COWAN, Acting City Attorney SBN 96372
SARAH REYNOSO, Acting Assistant City Attorney SBN 120277
SReynoso@ci.berkeley.ca.us
MARK J. ZEMBSCH, Deputy City Attorney SBN 127901
KRISTY van HERICK, Deputy City Attorney SBN 178685
2180 Milvia Street, Fourth Floor
Berkeley, CA 94704
TEL.: (510) 981-6950
FAX.: (510) 981-6960

Attorneys for Defendants
CITY OF BERKELEY; RICKY DAVIS;
ROGELIO MARQUINA and JOSEPH AYANKOYA

DAVID M. POORE SBN 192541
KAHN BROWN & POORE LLP
DPoore@kahnbrownlaw.com
110 Kentucky Street
Petaluma, CA 94952
TEL: (707) 763-7100
FAX: (707) 763-7180

Attorneys for Plaintiffs
JOHN SMITH and LIONEL BRAKINS, JR.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOHN SMITH and LIONEL BRAKINS, JR.

Plaintiffs,

vs.

CITY OF BERKELEY, RICKY DAVIS;
ROGELIO MARQUINA; JOSEPH
ANACOYA,

Defendants.

NO. C08-04897 MHP

**STIPULATION AND ~~PROPOSED~~
ORDER TO CONTINUE THE INITIAL
CASE MANAGEMENT CONFERENCE**

**DATE: February 2, 2009
TIME: 4:00 p.m.
CTRM: 15, 18th Floor
San Francisco**

IT IS HEREBY STIPULATED by and between the parties to continue the
presently scheduled Initial Case Management Conference date from February 2, 2009, to a new
date and time that is convenient to the Court and the parties with the exception of February 13
through 20 as the attorneys have other conflicts during this period. The parties understand that

the following dates are available which work within the parties' respective calendars: February 23, and March 2, 9, 16 and 23. The parties are willing to participate in a telephone conference with the Court, as necessary, to select new dates and times.

The parties are submitting this request in the above entitled case and all other related cases. There is good cause for the stipulation to extend time as follows:

- Unavailability of Lead Trial Counsel: The primary purpose of this request is the unavailability of lead trial counsel for the plaintiffs. In particular, plaintiffs' lead trial counsel, David M. Poore, has been scheduled for a significant discovery and status hearing in the nationwide class action entitled *Stalnaker v. Allstate Insurance Company, et. al.* Case No. 04 CV 2628 which is pending before the District Court, El Paso County, State of Colorado, located in Colorado Springs, Colorado. Given this conflict, it would be impossible for plaintiffs' lead trial counsel to attend both hearings as plaintiffs' counsel is required to travel to Colorado Springs. The parties stipulate and agree that this trial conflict constitutes good cause to continue this matter.
- No Prior Trial Continuance Requests: The parties have not made any prior requests for a continuance of the Initial Case Management Conference in this matter.
- Judicial Economy and No Prejudice: The parties are not making this request for any improper purpose, including undue delay. Instead, the parties agree that judicial economy will be served if this request is granted. In particular, it is crucial that plaintiffs' lead trial counsel attend and participate in the Initial Case Management Conference. Moreover, neither party would suffer any prejudice if the trial date was continued; instead, the parties have stipulated to this request.

///

///

///

///

///

///

1 SO STIPULATED.

3 Respectfully submitted:

4 ZACH COWAN, Acting City Attorney
5 SARAH REYNOSO, Acting Assistant City Attorney
6 MARK J. ZEMBSCH, Deputy City Attorney
7 KRISTY van HERICK, Deputy City Attorney

8 Dated: January 26, 2009.

By: _____/s/_____

9 MARK J. ZEMBSCH, Deputy City Attorney
10 Attorneys for City of Berkeley; Ricky Davis;
11 Rogelio Marquina and Joseph Ayankoya

12 Respectfully submitted:

KAHN BROWN & POORE LLP

13 Dated: January 26, 2009.

By: _____/s/_____

14 DAVID M. POORE
15 Attorney for Plaintiffs LaDaniel Key; Jimmy Smith;
16 Johnny Tolliver; Louis Jernigan; Melvin Ponder;
17 Eddie Percoats and Tay Woods

18 **ORDER**

19 THE COURT HEREBY ORDERS AS FOLLOWS:

20 The parties' request to continue the Initial Case Management Conference is hereby
21 GRANTED. The presently set Case Management Conference on February 2, 2009, is hereby
22 VACATED. The parties are ordered to appear at an Initial Case Management Conference on
23 March 23, 2009, at 4:00 a.m./p.m. to set a trial date and new deadlines.

24 IT IS SO ORDERED.

